IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6525 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJYAKUMAR DATTATRAY SHANE

Versus

G R ALORIA

Appearance:

1. Special Civil Application No. 6525 of 1988

MR HD VASAVADA for Petitioner No. 1

MS DEVANI, A.G.P. for Respondent No. 1-3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 20/12/2002

ORAL JUDGEMENT

1. The petitioner, who was working as peon with the respondent No.2 Mamlatdar, Gandevi in Mid Day Meal Scheme introduced from 1984 by the State Government, has filed this petition under Article 226 of the Constitution of India and prayed that the respondents be restrained from terminating his service as peon. Initially, Notice was ordered to be issued in 1988 by the learned Single Judge

of this Court and ad.interim relief of status-quo was granted in favour of the petitioner. Later on the petition was admitted and by speaking order interim relief was confirmed by the learned Single Judge of this Court. It was observed by the learned Single Judge that the appointment of the petitioner as peon seems to have not been made in accordance with Rules & Regulation. However, since he is in service for a period of about 4 years, therefore, it would not be proper to permit the respondents to discontinue his service unless regularly selected candidate is available. Therefore, learned Single Judge observed that as and when regularly selected candidate is available then it will be open to the respondents to terminate his service in accordance with law. It was also made clear that even if the petition remains pending and if mid-day meal scheme is closed or for whatever reasons it is suspended, the petitioner shall have no right to continue in service during the suspension period of the scheme or when the same is closed, except on the ground that employment is for 29 days or any other lawful reasons the services of the petitioner may be terminated.

2. Thus, under the interim orders of the Court the petitioner continued to remain in service. Last time when this matter was placed before this Court Ms.Devani, learned A.G.P. for the respondents was directed to find out whether this petition would survive any more or not and whether regular appointment was made in place of the petitioner or not.

3. Today, Ms.Devani, learned A.G.P. stated at the Bar that under the interim orders of the Court the petitioner had continued to remain in service as Peon and so far nobody else is appointed in his place.

4. Shri Vasavada, learned Counsel for the petitioner submitted that other similarly situated persons, who have filed petition before this Court, their services have been regularized, therefore, in the instant case the respondents be directed to regularize the services of the petitioner also because by now the petitioner has remained in service for more than 18 years and it would not be proper to terminate the services of the petitioner at this stage after so many years.

5. Having regard to the peculiar facts and circumstances of the case, I am of the considered opinion that when the petitioner had remained in service till today, though under the interim order of the Court, it would not be proper to permit the respondents to

terminate the services of the petitioner as Peon. Accordingly, the respondents are directed not to terminate the services of the petitioner except in accordance with law, on any other ground of misconduct, etc. if it is there, otherwise not. The petitioner may now make proper representation with the Authority i.e. Collector, Navsari for regularising his services as it was done by them in case of others. He shall make such representation within 2 months from today. On receipt of such representation the concerned Authority of the respondents may take just and proper decision in accordance with law and try to decide his representation sympathetically. The Authority shall take decision in the matter as early as possible, preferably within 6 months from the date of receipt of such representation.

With these observation and direction, this petition is disposed of. Rule made absolute accordingly to the aforesaid extent. No order as to costs.

Date : December 20, 2002 (B.J.Shethna, J.)

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